BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

GENERAL TERMS & CONDITIONS OF CONTRACT

VOLUME 1, SECTION III

General Terms & Conditions of Contract (GCC)

A. INTRODUCTION

1. DEFINITION OF TERMS

1.1. ‘Contract’ means the agreement entered into between the Owner and the Contractor as per the Contract Agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.2. ‘Owner’ shall mean Bangalore Electricity Supply Company, (BESCOM) and shall include its legal representatives, successors and assigns.

1.3. ‘Contractor’ or ‘Selected Bidder’ or ‘Agency’ shall mean the Bidder whose bid will be accepted by the Owner for the award of the contract and shall include such successful Bidder’s legal representatives, successors and permitted assigns.

1.4. ‘Engineer’ shall mean the officer appointed by the Owner to act as Engineer from time to time for the purpose of the Contract.

1.5. ‘Consulting Engineer’/’Consultant’ shall mean any firm or person duly appointed as such from time to time by the Owner.

1.6. ‘Works’ shall mean and include all the activities to be carried out as per the detailed scope of the work.

1.7. “Specifications‟ shall mean the Specifications and Bidding Document forming a part of the Contract and such other schedules and drawings as may be mutually agreed upon

1.8. The term ‘Contract price’ shall mean the amount quoted by the Contractor in his bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire scope of the contract.

1.9. ‘Inspector’ shall mean the Owner or any person nominated by the Owner from time to time, to inspect the contract under the Contract and/or the duly authorized representative of the Owner.

1.10. ‘Site' shall mean and include the Land and other places on, into or through which the Works and the related facilities are to be provided / Erected or Installed and any adjacent Land, Paths, Street or Reservoir which may be allocated or used by the Owner or Contractor in the Performance of the Contract.

1.11. “Manufacturer’s Works” or “Contractor’s Works”, shall mean the place of work used by the manufacturer, the Contractor, their collaborators/associates or Sub-Contractors for the performance of the Contract

1.12. ‘Notice of Award of Contract’/‘Letter of Award’/‘Telex of Award’/’Letter or Intent’ shall mean the official notice issued by the Owner notifying the Contractor that his bid has been accepted.

1.13. ‘Date of Contract’ shall mean the date on which Notice of Award of Contract/Letter of Award has been issued.

1.14. ‘Month’ shall mean the calendar month. ‘Day’ or ‘Days’ unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each.

A ‘Week’ shall mean continuous period of seven (7) days.

1.15. ‘Writing’ shall include any manuscript, type written or printed statement, with signature and/or seal as the case may be.

1.16. When the words ‘Approved’, ‘Subject to Approval’, ‘Satisfactory’, ‘Equal to’, ‘Proper’, ‘Requested’, ‘As Directed’, ‘Where Directed’, ‘When Directed’, ‘Determined by’, ‘Accepted’, ‘Permitted’, or words and phrases of like importance are used the approval, judgment, direction etc. is understood to be a function of the Owner/Engineer.

1.17. “Startup” shall mean the time period required to bring the equipment covered under the Contract from an inactive condition, when construction is essentially complete, to the state ready for trial operation. The start-up period shall include preliminary inspection and check-out of equipment and supporting sub-system, initial operation of the complete equipment covered under the Contract to obtain necessary pre-trial operation data, perform calibration and corrective action, shut- down, inspection and adjustment prior to the trial operation period

1.18. The term “Final Acceptance”/ “Taking Over” shall mean the Owner’s written acceptance of the contract performed under the Contract, after successful commissioning/completion of Performance and Guarantee Tests, as specified in the accompanying Technical Specifications or otherwise agreed in the Contract

1.19. ‘Guarantee Period’ shall mean the period during which the Contractor shall remain liable for repair or replacement of any defective part of the works performed under the Contract.

1.20. ‘Engineer in charge of contract’ shall mean the Engineer of the appointed by Owner.

1.21. ‘Latent Defects’ shall mean such defects caused by faulty material or work-man-ship which cannot be detected during inspection, testing etc, based on the technology available for carrying out such tests.

1.22. Words imparting the singular only shall also include the plural and vice – versa where the context so requires.

1.23. Words imparting 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.

2. APPLICATION

2.1. These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. STANDARDS

3.1. The services provided under this Contract shall conform to the standards mentioned in the IFB.

4. LANGUAGE AND MEASURES

4.1. All documents pertaining to the Contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, or any other writing shall be written in English/Kannada language. The Metric System of measurement shall be used exclusively in the Contract.

5. CONTRACT DOCUMENTS

5.1. The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:

a) Invitation for Bid including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract and all other documents included under Volume- I.

b) Contractor's Bid Proposal and the documents attached there to including the letters of clarifications thereto between the Contractor and the Owner/Consultant prior to the Award of Contract except to the extent of repugnancy.

c) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of the Owner /Consultant.

d) Letter of Award and any agreed variations of the conditions of the documents, if any.

5.2. In the event of any conflict between the above mentioned documents, the matter shall be referred to the Chief Engineer

Ele., BRAZ, BESCOM whose decision shall be considered as final and binding upon the parties.

6. USE OF CONTRACT DOCUMENTS AND INFORMATION

6.1. The Contractor shall not, without the Owner's prior written consent, disclose the Contract, or any provision thereof, information furnished by or on behalf of the Owner in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance.

6.2. The Contractor shall not, without the Owner's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.

6.3. The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract or other information, concerning the services unless prior written permission has been obtained from the Owner.

6.4. Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of the Owner and shall be returned (in all copies) to the Owner on completion of the Contractor's performance under the Contract if so required by the Owner.

7. AMENDMENT

7.1. No amendment or other variation of the contract shall be effective unless it is in writing, is dated, expressly refers to the contract, and is signed by a duly authorized representative of each party hereto.

8. JURISDICTION OF THE CONTRACT

8.1. The laws applicable to the Contract shall be the laws in force in India. The Courts of Bengaluru City of Karnataka State in India, shall have exclusive jurisdiction in all matters arising under this Contract.

9. MANNER OF EXECUTION OF THE CONTRACT

9.1. The contract, unless otherwise agreed to, shall be signed within 15 days of the acceptance of the Letter of Indent, at the office of

the Owner on a date and time to be mutually agreed. The Contractor shall provide for signing of the Contract, Performance Guarantee in duplicate, appropriate power of attorney and other requisite materials. In case the Contract is to be signed beyond the stipulated time, the Bid Guarantee submitted with the Proposal will have to be extended accordingly.

9.2. The Agreement will be signed in duplicate and the Contractor shall be provided with one signed original and the Original will be retained by the Owner.

10. ENFORCEMENT OF TERMS

10.1. The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the Contract.

11. COMPLETION OF THE CONTRACT

11.1. Unless otherwise terminated under the provisions of any other relevant clause, the contractual (Engagement) period from date of issue of DWA shall be 12 months for which the required services are to be provided, unless extended during the course of the contract. The contract period may be extended for a period of one year at the discretion of BESCOM, based on the satisfactory performance of the agency, if required.

B. GUARANTEES & LIABILITIES

12. TIME – THE ESSENCE OF THE CONTRACT

12.1. The timelines for providing the services of 11 vehicles as detailed in the scope of the contract and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his work in stipulated timelines.

12.2. The contractor shall submit the EPF, ESI and GST breakup for the Services of Drivers while awarding the contract as and when requested by BESCOM.

13. TERMS AND CONDITIONS

13.1. In the interest of BESCOM services, the total requirements of

Vehicles along with driver Services on contract basis to the Industrial area service stations (24X7) at Chandapura divisions may vary. However, such changes will be as per the provisions of KTPP Act.

13.2. The details of Service stations for which the Vehicle along with driver on hire basis needs to be provided, shall be provided to the successful bidder along with the Letter of Intent.

13.3. **Payment terms to the Drivers**:

Salary of the drivers shall be paid by the agency irrespective of payment made by BESCOM to the agency. The bidder shall disburse the wages of the drivers within ten days from the beginning of the month as per the prevailing Minimum Wages Act. The firm while submitting the regular monthly bill shall enclose the previous month salary payment made with stipulated date and same shall cross verified by the concerning bill passing officers.

The bidder should pay the wages to the Drivers to their saving bank accounts of Drivers only and furnish the details (name of the drivers, Account No, Name of the bank, Paid amount).

The bidder should pay the EPF amount with 15 days of the month to Regional Commissioner of Provident fund of Each drivers.

13.4. The bidder shall pay the salary to vehicle drivers as per the "Minimum wages Act " and also it should be ensuring that the salary paid should not be lesser than, as per prevailing "Minimum wages Act".

13.5. Mode of payment shall be monthly and shall be paid on or before 10^{th} of each succeeding month. Payment of salary to drivers must be made to their saving bank accounts only.

13.6. The bidder shall pay EPF, ESI, GST, Income tax of its employees directly to the respective government/Central government authorities as per the prevailing norms using their register code. The concerned paid challans with applicable certificates shall be furnished for verification to BESCOM along with the bills of succeeding month by agency. Remittance of such amount is wholly the responsibility of the agency.

13.7. All provisions related as per the Acts noted below shall be provided to the employees by the agency only and agency shall provide all related benefits under these following workmen's act related to Labor law and motor vehicle acts.

a. Minimum wages act, 1948.

b. Payment of wages act, 1936.

c. Contract Labour (Regulation and abolition) act, 1970.

d. Employee PF and Miscellaneous Provision Act, 1952.

e. Employees State Insurance Act, 1948.

f. Workmen's Compensation Act.

g. All Labourers Law and Rules pertaining to labourers. Providing benefits as per above Laws to its employees is responsibility of the contract Agency itself.

h. Karnataka Motor Vehicle rules.

i. RTO Rules & Regulations.

13.8. The successful agency, only the rate quoted by is applicable and shall be not entitled for any other charges.

13.9. The agency should provide the required fuel (petrol/diesel) to the vehicle. Meter reading will be accounted before commencing the transit.

13.10. The successful Bidder shall furnish an **agreement on Rs.8,500/- stamp paper** in the prescribed format within 15 days from the date of Letter of Intent. The Successful Bidder shall also furnish the correct details of Employees name, EPF/ESI Account No's, within 30 days from the date of letter of award, failing which award/tender will be cancelled.

13.11. In case of any accidents, injuries etc. to the engaged drivers of the agency, compensation shall be payable by the contract agency only and BESCOM is not responsible in anyway.

13.12. In case the Bidder, sub-let the tender to other contract agency, such Bidder will be rejected by giving 7 days' notice. Any loss on account of such acts to BESCOM shall be borne entirely by the agency itself.

13.13. This contract is for a period of one year. In case of any unsatisfactory situations BESCOM has the right to cancel the award without giving any notice. Contact agency and its employees has no right to disclose any technical secrecy, Commercial secrecy and Social secrecy of BESCOM to others. The CEE, BRAZ, BESCOM has full rights to accept or reject the staff/drivers provided by the agency.

13.14. In case of any disputes arising out of this tender, the same shall be redressed in the Bangalore jurisdiction court by both parties.

13.15. The Agency shall be responsible for any damage or loss to the vehicle during period.

13.16. The driver shall responsible for maintaining logbook of the Vehicle.

13.17. The agency shall be responsible for maintenance of all certificates viz., insurance, emission certificate and any others applicable as per the prevailing rules and regulations.

13.18. If the vehicle is utilized without having the necessary valid certificates, agency is held responsible for any mishap due to such lapses.

13.19. The agency/driver shall take care to maintain the vehicle at good conditions in order to avoid breakdowns.

14. EFFECTIVENESS OF THE CONTRACT

14.1. The Contract shall be considered as having come into force from the date of the notification of award unless otherwise provided in the notification of award.

15. TAXES, PERMITS & LICENCES

15.1. The Contractor shall be liable and pay all non-Indian taxes, duties, levies lawfully assessed against the Owner or the Contractor in pursuance of the Contract. In addition, the Contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Contractor for his personal income & property only.

15.2. No claim for any increase towards the Statutory Variation regarding enhancement of existing Tax or Duty or introduction of a new Tax or Duty or variation in EPF / ESI applicable shall be entertained by the owner during the extension period of contract, if any, if extension of the Contract is required due to the causes attributable to the Contractor.

15.3. The Owner will deduct Taxes applicable at Source as per applicable law from the proceeds payable to the Contractor.

16. DEFENCE OF SUITS

16.1. If any action in court is brought against the Owner or Engineer or an officer or agent of the Owner, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of Sub-Contractors, workmen, suppliers or employees, the Contractor shall in all such cases indemnify and keep the Owner, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such

action.

17. LIMITATION OF LIABILITIES

17.1. The final payment by the Owner by releasing the Contract Performance Guarantee in pursuance of the Contract shall mean the release of the Contractor from all his liabilities under the Contract. Such final payment shall be made only at the end of the Guarantee/Warranty period, and till such time as the Contractual liabilities and responsibilities of the Contractor, shall prevail. All other payments made under the Contract shall be treated as on-account payments.

18. ENGINEER'S DECISION

18.1. In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

19. CHANGE OF QUANTITY

19.1. During the Contract period, the Owner reserves the right to increase or decrease the quantities of vehicles under the Contract but without any change in unit price or other terms & conditions. Such variations unless otherwise specified in the accompanying general Conditions of Contract and/or Technical Specifications, shall be subject to the specific provision for the individual items but the total variations in all such items under the Contract shall be limited to a percentage of the Contract price.

19.2. The Contract price shall accordingly be adjusted based on the unit rates available in the Contract for the change in quantities as above. The base unit rates, as identified in the Contract shall however remain constant during the currency of the Contract.

19.3. The quantity of Vehicle requirement by the owner specified in the document is provisional. The variation in total quantity shall be limited to Twenty five percent (25%). The amount put to tender is provisional, it may vary and the agency shall be paid for such finalized quantity at the unit rate indicated in the Letter of Award during the contract period.

20. NO WAIVER OF RIGHTS

20.1. Neither the inspection by the Owner or the Engineer or any of their officials, employees, or agents nor any order by the Owner or the Engineer for payment of money or any payment for or

acceptance of, the whole or any part of the Works by the Owner or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the Owner or any right to damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

C. CONTRACT SECURITY AND PAYMENTS

21. Branding of Vehicles:

21.1. Branding of vehicles shall be carried out at the cost of the bidder as per the requirement of BESCOM.

22. PAYMENTS

22.1. PAYMENTS FOR SERVICE

22.1.1. The payment towards the Services provided shall be done monthly basis. **In the event of an award the agency shall furnish the following original documents/enclosures in duplicate for payment. Otherwise the bills are liable to be rejected.**

a. Copy of Vehicle Log Register – Each sheet of the copy shall be attested by the Officer using the Vehicle.

b. Attested copy of challans consisting details of EPF/ESI and GST paid during previous month to the respective Govt/Central authorities along with the Employees details.

c. Copy of statement of EPF paid during the previous month.

d. Copy of statement of ESI paid during the previous month.

e. Copy of GST paid in the respective format.

f. Each year during the month of December, Rs 20/- from each staff has to be deducted towards labour welfare fund and a contribution of Rs.40/- (each) from the contract agency side has to be paid to Welfare commissioner Karnataka Labour Welfare Board, My sugar building Annex, 2nd Floor, J.C Road, Bangalore-2 .The payment details pertaining to this has to be furnished in the subsequent monthly bill.

g. During submission of 1st bill, competent authority approval letter shall be submitted.

22.1.2. The successful agency shall submit quadruplicate bill with certification from the Officer using vehicle duly countersigned by the Sub-division officer along with the certified copies of the trip sheet signed by the Officer using vehicle, to the Executive Engineer (Elec), concerned division under whose jurisdiction vehicles are being provided, before 5th of the succeeding month. 100% payment on monthly basis will be made in RTGS mode after effecting applicable recoveries before 10th of the succeeding month. The payment shall be made at concerned division only.

22.1.3. Before making payment to the agency, concerned officer should ensure that the Agency shall produce bank statement of Staff, as proof for having paid the previous month salary and EPF/ESI to the individual employees of the said contract order.

22.1.4. The firm while submitting the regular monthly bill shall enclose the previous month salary payment made with stipulated date and same shall cross verified by the concerning bill passing officers.

22.1.5. The agency shall bear the salary of Driver(s) as per Minimum Wages Act and inclusive of ESI & EPF.

22.1.6. The Agency should produce the salary slip by showing the authenticated EPF code, ESI code and corresponding EPF & ESI deductions to the Drivers of the said contract order and all other statutory required.

22.1.7. The concerned bill passing officers while processing the firm's bill will /-cross verify the EPF amount payment up to previous month. If noticed that there is delay in EPF payment or payment not made within stipulated period (i.e.15 days) then suitable action shall be taken against the agency as per BESCOM rules.

22.1.8. **It is mandatory that, the Agency shall arrange the payments to its employees within 7th day of every month irrespective of payment received from BESCOM**

22.1.9. Further, payment shall be made to its employees through Bank account only.

22.1.10. The Agency shall arrange to pay EPF, ESI, and GST in respect of the persons deployed in BESCOM directly to the respective Government/Central Government Departments at prevailing rates from time to time be paid directly by the agency using their registered code. The necessary paid challans with applicable Certificates shall be furnished for verification to BESCOM along with the bills of succeeding month by Agency. Remittance of such amount is wholly the responsibility of the Agency.

22.2. **CURRENCY OF PAYMENT**

All payments under the Contract shall be in **Indian Rupees** only.

22.3. **APPLICATION FOR PAYMENT**

22.3.1. The Contractor shall submit bill for the payment in the prescribed proforma.

22.3.2. The concerned officer shall make arrangements to pass the bills verified and certified by the Officer using vehicle countersigned by the Sub-division officer submitted to the Division Executive Engineer (Ele)

22.4. **Mode of Payment:-**

Payment due shall be made by the Owner through crossed cheques / RTGS to the awarded agency.

23. PENALTY FOR DELAY IN EXECUTION/NON- EXECUTION OF THE WORK.

23.1. **If the Vehicles are not sent on any day for whatever reason, the charges at (Monthly Charges awarded/ (28 or 30 or 31)) for each non-available day shall be deducted from the respective month's bill.**

23.2. In addition to the above, **the penalty @ the rate of ½ % per week of the non-available days amount subject to maximum of 10% of total contract value shall be deducted.**

23.3. **The penalty on continuance of delay beyond 10 weeks shall be at the 10% of the Total Contract value**. Beyond this period of 10 weeks, BESCOM at its discretion is at the liberty **to terminate the contract duly forfeiting the Performance Bank Guarantee and blacklisting the firm for a period of three years.**

D. RISK DISTRIBUTION

24. INSURANCE

24.1. The hired vehicles should be fully/ comprehensively insured by the bidder, at his own cost covering all risk and liabilities including strike & riots.

24.2. All liabilities arising out of the accidents, disturbances to the vehicle(s) operations of the BESCOM will rest upon the bidder.

24.3. The copies of documentation in respect of insurance shall be submitted to BESCOM on the date of placement of vehicle and renewals made subsequently shall be submitted in time

24.4. The agency shall provide insurance coverage to its staff including driver of vehicle at his own cost

25. LIABILITY FOR ACCIDENTS AND DAMAGES

25.1. In the event of any accident or damages while the vehicle(s) is on the duty, BESCOM shall be completely free from any liability of any nature connected with the accident/damage(s). **The bidders himself will be fully and exclusively responsible for any damage to vehicle(s) or any personal injury to driver or any other person in the employment of the bidder, occupants of the vehicle(s) or any person(s) or damage to any property or person. This includes by BESCOM or its employees as a result of any accident or any other reason involving the failure of the vehicle(s)/driver, the bidder shall reimburse on demand and without any demur the compensation/damages if any sustained by BESCOM on this account.**

25.2. The bidder will be solely responsible for any consequences under laws, arising out of any accident caused by the vehicle(s)/equipment to the property or personal of BESCOM. **The bidder shall also be responsible for any claim/compensation that arises due to damage/cause or injuries sustained by any third party/parties/including life permanent injuries etc., by his/their vehicle(s), in addition to damages/disabilities/death etc. the BESCOM employees/property. The bidder shall reimburse on demand and without any demur the compensation/damages if any sustained by the BESCOM on this account.**

25.3. **BESCOM shall not be responsible for any claim/compensation that arises due to damages/injuries/pilferage to the bidder's vehicles/property under any circumstances while the vehicle(s) equipment(s) were/are/is engaged for the BESCOM duty by him.**

25.4. It is the responsibility of the bidder to inform the user of the vehicle as well as the Head of Department the occurrence of any accident involving his/their vehicle(s) as early as possible to avoid any disruption of BESCOM operations, provide substitute vehicle and submit a detailed report to the head of department.

25.5. **Absence of vehicle due to any accident shall not entitle the bidder for any exemptions from the liabilities of the**

contract whatsoever. Arrangement of the alternative/substitute is the responsibility of the bidder.

26. FORCE MAJEURE

26.1. Force majeure is herein defined as any cause which is beyond the control of the Contractor or the Owner as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as:

a. Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;

b. Acts of any Government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees, embargoes. Provided either party shall within fifteen (15) days from the occurrence of such a cause notify the other in writing of such causes.

26.2. The Contractor or the Owner shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above

26.3. The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after Contractor's performance of obligation has been delayed due to other causes.

27. CONTRACTOR`S DEFAULT/LIQUIDATED DAMAGES

27.1. If the Contractor shall neglect to execute the contract with due diligence and expedition or shall refuse or neglect to comply with any reasonable order given to him, in writing by the Engineer in connection with the contract or shall contravene the provisions of the Contract, the Owner may give notice in writing to the Contractor to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days from the date of serving the notice, then and in such case the Owner shall be at liberty to terminate the contract.

27.2. **The Owner may accept the Services assessing the Liquidated damages for shortcomings in works against the Contractor as per provisions of the Scope of contract and such assessed amounts shall be deducted from the Contract price or otherwise recovered. A liquidated damages @ ½ % per week will be levied against the delay in providing the Services of vehicles defined in clause 6 & 7 of IFB subject to maximum of 10% of the total contract**

value. Such Liquidated damages claimed shall be independent of the Penalty Clause 23 of this section.

27.3. Such action by the Owner as aforesaid the termination of the Contract under this clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract including guarantee period.

28. TERMINATION OF CONTRACT ON OWNER`S INITIATIVE

28.1. The Owner reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under clause entitled 'Contractor's Default'. The Owner shall in such an event give fifteen (15) days' notice in writing to the Contractor of his decision to do so.

28.2. The Contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and Contracts to the extent they are related to the work terminated and terms satisfactory to the Owner or purchasing activity related to the work terminated.

28.3. In the event of such a termination the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

28.4. If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies then unless the Owner is satisfied that the legal representatives of the individual Contractor or of the proprietor of the propriety concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the Contract the Owner shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to payment of any compensation to the estate of deceased Contractor and/or to the surviving partners of the Contractor's firm on account of the cancellation of the Contract. The decision of the Owner that the legal representatives of the deceased Contractor or surviving partners of the Contractor's firm cannot carry out and complete the Contract shall be final and binding on the parties. In the event of such cancellation the Owner shall not hold the estate of the deceased.

28.5. The contract is liable to be terminated at the absolute discretion of BESCOM without assigning any reasons on the following grounds and the security deposit paid by the bidder will be forfeited.

29.0 TERMINATION OF CONTRACT

a) The services to be found unsatisfactory.
b) Breach of any terms of the contract
c) If the agency fails to provide the services as per the agreed terms and on violation of any of the terms of the contract, the firm is liable to be blacklisted besides termination of the contract.
d) If the agency fails to remit the ESI&EPF amount of its employees to the concerned authority.
e) If the agency fails to make payment to manpower within the time specified
f) If found to have furnished misleading or false representations in statements and attachments submitted as proof of the qualifying requirement at a later date.

30.0) FRUSTRATION OF CONTRACT

30.1 In the event of frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-clause 32.4 below.

30.2 In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of willful or flagrant breach by the Owner) and/or Contractor then the works under the Contract shall be suspended.

30.3 Furthermore, if the Owner is unable to make satisfactory alternative arrangements for financing to the Contractor in accordance with the terms of the Contract within three months of the event, the parties hereto shall be relieved from carrying out further obligations under the Contract treating it as frustration of the Contract.

30.4 In the event referred to in sub-clauses 32.1 to 32.3 above the parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on “Quantum merit” basis, which shall be determined by mutual agreement between the parties.

31 **GRAFTS AND COMMISSIONS ETC**.

31.1 Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner(s), agent(s), officer(s), director(s), employee(s) or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the Owner, shall in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to the Owner resulting from any cancellation. The Owner shall then be entitled to deduct the

amount so payable from any money otherwise due to Contractor under the Contract.

E. RESOLUTION OF DISPUTES

32 SETTLEMENT OF DISPUTES

32.1 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.

32.2 If any dispute or difference of any kind, whatsoever, shall arise between the Owner and the Contractor, arising out of the Contract for the performance of the contract whether during the progress of the contract or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, be referred to and settled by the Engineer who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to the Owner and the Contractor.

32.3 Save as hereinafter provided, such decision in respect of every matters so referred shall be final and binding upon the parties until the completion of the contract and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence, whether he or the Owner requires arbitration as hereinafter provided or not.

32.4 If after the Engineer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.

32.5 In the event of the Engineer failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either the Owner or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

33 ARBITRATION

33.1 All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided

33.2 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Owner and the third

to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

33.3 The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. The venue of arbitration shall be Bangalore City of Karnataka State in India.

33.4 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of all the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

33.5 The arbitrator shall have full powers to review and/or revise any decision, opinion, direction, certification or valuation of the Engineer in accordance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.

33.6 No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

33.7 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract

Sd/-

Chief Engineer Ele.,

BRAZ, BESCOM